

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ERIC R. TOWNSEL,)
Plaintiff,) CASE NO. C07-482-JLR
v.)
KEN QUINN, et al.,) ORDER DENYING PLAINTIFF'S MOTION
Defendants.) TO PERPETUATE TESTIMONY

This is a civil rights action brought under 42 U.S.C. § 1983. This action was originally filed in April 2007, and a final judgment was entered in this matter in March 2009. The case is currently on appeal to the United States Court of Appeals for the Ninth Circuit. Plaintiff has presented to this Court for consideration a motion under Rule 27(b) of the Federal Rules of Civil Procedure to perpetuate testimony. Plaintiff requests in his motion that this Court both grant *and* conduct depositions of the defendants in this case pursuant to Rule 27(b). Defendants have filed responses in opposition to plaintiff's motion¹ and plaintiff has filed a reply brief in support of his motion.

¹ Defendant Munk presented his response to plaintiff's motion to perpetuate testimony in the form of a motion to strike plaintiff's motion. The Court has considered the substance of defendant Munk's motion in ruling on plaintiff's motion, and sees no need to independently address defendant Munk's motion. Defendant Munk's motion to strike (Dkt. No. 174) is therefore STRICKEN from the Court's motion calendar.

**ORDER DENYING PLAINTIFF'S MOTION
TO PERPETUATE TESTIMONY - 1**

1 Pursuant to Rule 27(b)(1), where a judgment has been rendered, and an appeal has been
2 taken, the court where the judgement was rendered may “permit a party to depose witnesses to
3 perpetuate their testimony for use in the event of further proceedings in that court.” A motion to
4 perpetuate testimony must specify the expected substance of the testimony being sought and the
5 reasons for perpetuating the testimony. Fed. R. Civ. P. 27(b)(2). A Court may permit the depositions
6 to be taken “[i]f the court finds that perpetuating the testimony may prevent a failure or delay of
7 justice.” Fed. R. Civ. P. 27(b)(3). Plaintiff fails to identify with sufficient specificity the expected
8 substance of the testimony he seeks or the reasons for perpetuating the testimony. Certainly nothing
9 in plaintiff’s motion satisfies this Court that perpetuating the testimony is necessary to “prevent a
10 failure or delay of justice.”

11 Accordingly, this Court does hereby ORDER as follows:

- 12 (1) Plaintiff’s motion to perpetuate testimony (Dkt. No. 173) is DENIED.
13 (2) The Clerk shall send copies of this Order to plaintiff, to all counsel of record, and to
14 the Honorable James L. Robart.

15 DATED this 14th day of October, 2009.

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18 Mary Alice Theiler
United States Magistrate Judge
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